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EXAMINER

STRODER, CARRIE A

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/519,729	Applicant(s) BENNETT ET AL.	
	Examiner CARRIE A. STRODER	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This is in response to the applicant's communication filed on 14 September 2009, wherein:

Claims 19-48 are currently pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 19-48 are rejected under 35 U.S.C. 112, first paragraph**, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 19-48 refer to calculating energy intensity and to determining a correcting factor correlating to the energy intensity. It is unclear in the specification just what the correcting factor is and how it is used to adjust the energy consumption. A person having ordinary skill in the art would not know how to determine the correcting factor or how to apply the correcting factor to the energy consumption.

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3. **Claims 19-48 are rejected** under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Examiner has reviewed applicant's disclosure and submits that these added limitations find no support in the specification as currently written, and is, therefore, directed to new matter.

a. Claims 19 and 25: "determining by at least one processor of the utility usage evaluation system respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities" is not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

b. Claim 19: "comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark

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standards automatically generated from dissimilar facilities" is not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

c. Claim 25: "comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes" is not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

d. Claim 31: "a utility consumption calculator configured to calculate a utility consumption from each utility source for at least one facility, calculate an energy intensity for one or more of the facilities, the energy intensity based at least partly on a timing and a frequency of use of equipment within the one or more facilities, determine respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities, and

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to apply the correcting factors to the utility consumptions of the facilities" and "a utility consumption comparer configured to compare the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities" are not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

e. Claim 37: "a utility consumption calculator configured to calculate the utility consumption from each utility source for at least one process, calculate an energy intensity for one or more of the processes, the energy intensity based at least partly on a timing and a frequency of use of equipment associated with the one or more processes, determine respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities, and apply the correcting factors to the utility consumptions of the processes" and "a utility consumption comparer configured to compare the corrected utility consumption of one or more of the

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processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes" are not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

f. Claims 43 and 44: "determining respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities" is not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

g. Claim 43: "comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities" is not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

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h. Claim 44: "comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes" is not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

i. Claims 45 and 46: "means for determining respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities" is not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

j. Claim 45: "means for comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities" is not described in the specification as written. Examiner reviewed the

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specification (no specific portions were cited) and did not find that the cited limitation.

k. Claim 46: "means for comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes" is not described in the specification as written. Examiner reviewed the specification (no specific portions were cited) and did not find that the cited limitation.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 19-48 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 19-48 refer to calculating a correcting factor. However, the correcting factor is undefined and therefore, vague and indefinite. Moreover, how the correcting factor is applied to the utility consumption is not clear.

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 19-21, 25-26, 31-33, 37-39, and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cmar (US 5566084).**

Referring to claim 19:

Cmar teaches

storing in at least one computer-readable storage medium of the utility usage evaluation system data representing one or more facilities operated by the organization (col. 3, lines 2-15; "By inputting the standard hours of occupancy for the building..." implies storing the data and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium);

storing in at least one computer-readable storage medium of the utility usage evaluation system data representing one or more utility sources, each facility

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using one or more of the utility sources (col. 3, lines 2-15; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available");

calculating by at least one processor of the utility usage evaluation system a utility consumption from each utility source for at least one facility (col. 3, lines 2-15; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available");

calculating by at least one processor of the utility usage evaluation system an energy intensity for one or more of the facilities, the energy intensity based at least partly on a timing and a frequency of use of equipment within the one or more facilities (col. 8, lines 31-41; "Default values for such ECRPO are thus established for the lighting, power and HVAC use-dependent end-use categories according to the building use on a watts per square foot basis" and where "watts per square foot" is interpreted as energy intensity (applicant's specification describes energy intensity as watts per square meter) and where it is implied that energy intensity is based upon timing and

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frequency of use of equipment, as timing and frequency of use are directly linked to the amount of energy used);

determining by at least one processor of the utility usage evaluation system respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

applying by at least one processor of the utility usage evaluation system the correcting factors to the utility consumptions of the facilities (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for

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analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities (col. 2, lines 3-15 and col. 2, lines 64 thru col. 3, line 6; "Such rules for disaggregating a bill are developed by auditing hundreds of buildings... Various subsets of the building population are constructed..." and "The resulting answer may now be compared with estimates" and Examiner interprets "dissimilar" as buildings other than the one receiving the evaluation); and

generating by at least one processor of the utility usage evaluation system a report detailing utility usage of one or more of the facilities, or part thereof, operated by the organization (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

Referring to claim 20:

Cmar teaches

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storing in at least one computer-readable storage medium of the utility usage evaluation system memory data representing one or more sites operated by the organization that are associated with one or more of the facilities (col. 3, lines 2-15; "By inputting the standard hours of occupancy for the building..." implies storing the data and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium);

calculating by at least one processor of the utility usage evaluation system a utility consumption from each utility source for at least one site (col. 3, lines 2-15; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available"); and

generating by at least one processor of the utility usage evaluation system a report detailing the utility usage of one or more of the sites (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

Referring to claim 21:

Cmar teaches

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generating by at least one processor of the utility usage evaluation system a report detailing the difference between utility consumption of one or more of the facilities and a respective benchmark standard for the facility (col. 11-12; "Some example reports are as follows:...Year-to-Year Comparisons...Identifies changes in the operation of a facility...").

Referring to claim 25:

Cmar teaches

storing in at least one computer-readable storage medium memory data representing one or more processes operated by the organization (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available." and "...the power end-use contains the process load, as opposed to a combined lighting and power end-use with separate process end-use." and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium);

storing in at least one computer-readable storage medium memory data representing one or more utility sources, each process using one or more of the utility

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sources (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available.");

calculating by at least one processor of the utility usage evaluation system a utility consumption from each utility source for at least one process (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available." and "...the power end-use contains the process load, as opposed to a combined lighting and power end-use with separate process end-use." and where it is implied that calculations will take place);

calculating by at least one processor of the utility usage evaluation system an energy intensity for one or more of the processes, the energy intensity based at least partly on a timing and a frequency of use of equipment associated with the one or more processes (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for

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analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

determining by at least one processor of the utility usage evaluation system respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

applying by at least one processor of the utility usage evaluation system the correcting factors to the utility consumptions of the processes (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and

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where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the processes with the utility consumption of respective benchmark standards automatically generated from dissimilar similar processes (col. 2, lines 3-15 and col. 2, lines 64 thru col. 3, line 6; "Such rules for disaggregating a bill are developed by auditing hundreds of buildings... Various subsets of the building population are constructed..." and "The resulting answer may now be compared with estimates" and Examiner interprets "dissimilar" as buildings other than the one receiving the evaluation);

generating by at least one processor of the utility usage evaluation system a report detailing utility usage of one or more of the processes, or part thereof, of the organization (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

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Referring to claim 26:

Cmar teaches

storing in at least one computer-readable storage medium memory data representing one or more sites operated by the organization that are associated with one or more processes (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available." and "...the power end-use contains the process load, as opposed to a combined lighting and power end-use with separate process end-use." and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium);

calculating by at least one processor of the utility usage evaluation system a utility consumption from each utility source for at least one site (col. 3, lines 2-15; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available"); and

generating by at least one processor of the utility usage evaluation system a report detailing the utility usage of one or more of the sites (col. 11 thru col. 12;

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"Some example reports are as follows:...Consumption by End-Use").

Referring to claim 27:

Cmar teaches generating by at least one processor of the utility usage evaluation system a report detailing the difference between utility consumption of one or more of the processes and a respective benchmark standard for the process (col. 11-12; "Some example reports are as follows:...Year-to-Year Comparisons...Identifies changes in the operation of a facility...").

Referring to claim 31:

Cmar teaches
at least one computer-readable storage medium (col. 3, lines 2-15; "By inputting the standard hours of occupancy for the building..." implies storing the data and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium); and

at least one processor that executes instructions stored on the at least one computer-readable storage medium, wherein the at least one computer-readable storage medium stores (col. 17, lines 25-39; "...the microprocessor-

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implementable processing for effecting the various process steps earlier delineated..."):

a client data store in which is stored data representing one or more facilities operated by an organization and data representing one or more utility sources, each facility using one or more of the utility sources (col. 3, lines 2-15; "By inputting the standard hours of occupancy for the building..." implies storing the data and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium); and

a benchmark database including data representing the utility consumption of respective benchmark standards with which the utility consumption of one or more of the facilities can be compared (col. 2, lines 3-15 and col. 2, lines 64 thru col. 3, line 6; "Such rules for disaggregating a bill are developed by auditing hundreds of buildings... Various subsets of the building population are constructed..." and "The resulting answer may now be compared with estimates" and where it is implied that the data from the buildings is stored in a database); and

wherein the at least one processor implements:

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a utility consumption calculator configured to calculate a utility consumption from each utility source for at least one facility, calculate an energy intensity for one or more of the facilities, the energy intensity based at least partly on a timing and a frequency of use of equipment within the one or more facilities, determine respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities, and to apply the correcting factors to the utility consumptions of the facilities (col. 7, lines 43-56 and col. 8, lines 31-41; "Default values for such ECRPO are thus established for the lighting, power and HVAC use-dependent end-use categories according to the building use on a watts per square foot basis" and where "watts per square foot" is interpreted as energy intensity (applicant's specification describes energy intensity as watts per square meter) and where it is implied that energy intensity is based upon timing and frequency of use of equipment, as timing and frequency of use are directly linked to the amount of energy used and "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form

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of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

a utility consumption comparer configured to compare the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities (col. 2, lines 3-15 and col. 2, lines 64 thru col. 3, line 6; "Such rules for disaggregating a bill are developed by auditing hundreds of buildings... Various subsets of the building population are constructed..." and "The resulting answer may now be compared with estimates" and Examiner interprets "dissimilar" as buildings other than the one receiving the evaluation); and

a report generator configured to generate a report detailing the utility usage of one or more of the facilities of the organization (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

Referring to claim 32:

Cmar teaches

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the client data store has stored in it includes data representing one or more sites operated by the organization that are associated with one or more facilities (col. 3, lines 2-15; "By inputting the standard hours of occupancy for the building..." implies storing the data and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium);

the utility consumption calculator is further configured to calculate a utility consumption from each utility source for at least one site (col. 3, lines 2-15; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available"); and

the report generator is configured to generate a report detailing the utility usage of one or more of the sites (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

Referring to claim 33:

Cmar teaches wherein the report generator is further configured to generate a report detailing a difference between utility consumption of one or more of the facilities and a respective benchmark standard standards

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for the facility (col. 11-12; "Some example reports are as follows:...Year-to-Year Comparisons...Identifies changes in the operation of a facility...").

Referring to claim 37:

Cmar teaches

at least one computer-readable storage medium (col. 3, lines 2-15; "By inputting the standard hours of occupancy for the building..." implies storing the data and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium); and

at least one processor that executes instructions stored on the at least one computer-readable storage medium, wherein the at least one computer-readable storage medium stores (col. 17, lines 25-39; "...the microprocessor-implementable processing for effecting the various process steps earlier delineated..."):

a client data store in which is stored data representing one or more processes operated by an organization, and data representing one or more utility sources, each process using one or more of the utility sources (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building

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for which only the bills, its use, and the square footage is available." and "...the power end-use contains the process load, as opposed to a combined lighting and power end-use with separate process end-use." and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium); and

a benchmark database including data representing the utility consumption of respective benchmark standards with which the utility consumption of one or more of the processes can be compared (col. 2, lines 3-15 and col. 2, lines 64 thru col. 3, line 6; "Such rules for disaggregating a bill are developed by auditing hundreds of buildings... Various subsets of the building population are constructed..." and "The resulting answer may now be compared with estimates" and where it is implied that the data from the buildings is stored in a database); and

wherein the at least one processor implements:

a utility consumption calculator configured to calculate the utility consumption from each utility source for at least one process, calculate an energy intensity for one or more of the processes, the energy intensity based at least partly on a timing and a frequency of use of

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equipment associated with the one or more processes, determine respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities, and apply the correcting factors to the utility consumptions of the processes (col. 3, lines 2-35 and col. 7, lines 43-56 and col. 8, lines 31-41; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available." and "...the power end-use contains the process load, as opposed to a combined lighting and power end-use with separate process end-use." and where it is implied that calculations will take place and "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

a utility consumption comparer configured to compare the corrected utility consumption of one or more of the

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processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes (col. 2, lines 3-15 and col. 2, lines 64 thru col. 3, line 6; "Such rules for disaggregating a bill are developed by auditing hundreds of buildings... Various subsets of the building population are constructed..." and "The resulting answer may now be compared with estimates" and Examiner interprets "dissimilar" as buildings other than the one receiving the evaluation); and

a report generator configured to generate a report detailing the utility usage of one or more of the processes of the organization (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

Referring to claim 38:

Cmar teaches

the client data store includes has stored in it data representing one or more sites operated by the organization that are associated with one or more processes (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available." and "...the power end-use contains the process load, as opposed to a combined lighting and power end-use with separate

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process end-use." and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium);

the utility consumption calculator is further configured to calculate a utility consumption from each utility source for at least one site (col. 3, lines 2-15; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available"); and

the report generator is configured to generate a report detailing the utility usage of one or more of the sites (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

Referring to claim 39:

Cmar teaches wherein the report generator is further configured to generate a report detailing a difference between utility consumption of one or more of the processes and respective benchmark standards (col. 11-12; "Some example reports are as follows:...Year-to-Year Comparisons...Identifies changes in the operation of a facility...").

Referring to claims 43 and 44:

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Claims 43 and 44 are the computer readable medium claims associated with the method claims of 19 and 25, respectively, and are rejected on the same basis as said claims.

Referring to claim 45:

Cmar teaches

means for storing in computer memory data representing one or more facilities operated by an organization (col. 3, lines 2-15; "By inputting the standard hours of occupancy for the building..." implies storing the data);

means for storing in computer memory data representing one or more utility sources, each facility using one or more of the utility sources (col. 3, lines 2-15; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available");

means for calculating the utility consumption from each utility source for at least one facility (col. 3, lines 2-15; "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available");

means for calculating an energy intensity for one or more of the facilities, the energy intensity based at least

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partly on a timing and a frequency of use of equipment within the one or more facilities (col. 8, lines 31-41; "Default values for such ECRPO are thus established for the lighting, power and HVAC use-dependent end-use categories according to the building use on a watts per square foot basis" and where "watts per square foot" is interpreted as energy intensity (applicant's specification describes energy intensity as watts per square meter) and where it is implied that energy intensity is based upon timing and frequency of use of equipment, as timing and frequency of use are directly linked to the amount of energy used);

means for determining respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

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means for applying the correcting factors to the utility consumptions of the facilities (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

means for comparing the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar similar facilities (col. 2, lines 3-15 and col. 2, lines 64 thru col. 3, line 6; "Such rules for disaggregating a bill are developed by auditing hundreds of buildings... Various subsets of the building population are constructed..." and "The resulting answer may now be compared with estimates" and Examiner interprets "dissimilar" as buildings other than the one receiving the evaluation); and

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means for generating a report detailing utility usage of one or more of the facilities, or part thereof, of the organization (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

Referring to claim 46:

Cmar teaches

means for storing in computer memory data representing one or more processes operated by an organization (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available." and "...the power end-use contains the process load, as opposed to a combined lighting and power end-use with separate process end-use." and where it would have been obvious to a person having ordinary skill in the art to store the data on a computer readable storage medium);

means for storing in computer memory data representing one or more utility sources, each process using one or more of the utility sources (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available.");

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means for calculating the utility consumption from each utility source for at least one process (col. 3, lines 2-35 and "...enough significant data can be gathered to predict what is happening in a building for which only the bills, its use, and the square footage is available." and "...the power end-use contains the process load, as opposed to a combined lighting and power end-use with separate process end-use." and where it is implied that calculations will take place);

means for calculating an energy intensity for one or more of the processes, the energy intensity based at least partly on a timing and a frequency of use of equipment associated with the one or more processes (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

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means for determining respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

means for applying the correcting factors to the utility consumptions of the processes (col. 7, lines 43-56 and col. 8, lines 31-41; "The value of energy savings is calculated by normalizing the before retrofit billing data to current billing data period and weather conditions" and where energy intensity, in the form of watts per square foot basis, is part of the calculations performed for analysis and where "normalizing" implies the use of corrective factors, which must be determined by the processor based on weather conditions, etc., in order to correct the analyzed data);

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means for comparing the corrected utility consumption of one or more of the processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes (col. 2, lines 3-15 and col. 2, lines 64 thru col. 3, line 6; "Such rules for disaggregating a bill are developed by auditing hundreds of buildings... Various subsets of the building population are constructed..." and "The resulting answer may now be compared with estimates" and Examiner interprets "dissimilar" as buildings other than the one receiving the evaluation); and

means for generating a report detailing utility usage of one or more of the processes, or part thereof, of the organization (col. 11 thru col. 12; "Some example reports are as follows:...Consumption by End-Use").

Referring to claim 47:

Cmar teaches replacing one or more of the facilities based on the results of the comparison with the respective benchmark standards (col. 11, lines 10-14; "Identifies the savings potential of modifying or replacing existing devices to achieve efficiency" and where devices is interpreted to include facilities).

Referring to claim 48:

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Cmar teaches reconfiguring one or more of the processes based on the results of the comparison with the respective benchmark standards (col. 11, lines 10-14; "Identifies the savings potential of modifying or replacing existing devices to achieve efficiency" and where devices is interpreted to include processes).

6. Claims 22-24, 28-30, 34-36, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cmar (US 5566084), in view of Or et al. (US 20020178047).

Referring to claims 22 and 28:

Cmar does not teach; however, Or teaches storing in at least one computer-readable storage medium of the utility usage evaluation system data representing one or more mobile assets associated with the organization (paragraphs 16-17; where "equipment" is interpreted to include mobile assets);

calculating by at least one processor of the utility usage evaluation system a utility consumption from each utility source for at least one mobile asset (paragraphs 16-17; "monitors and analyzes energy consumption"; and

generating by at least one processor of the utility usage evaluation system a report detailing the utility

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usage of one or more of the mobile assets of the organization (paragraph 16 and Figs. 6-7).

It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Cmar as taught by Or because this would allow for additional flexibility and completeness in calculating the energy use of an organization.

Referring to claims 23 and 29:

Cmar does not teach; however, Or teaches storing in at least one computer-readable storage medium of the utility usage evaluation system data representing one or more sites operated by the organization that are associated with one or more mobile assets (paragraphs 16-18; "particular energy system in a facility" where "energy system" is interpreted to include mobile assets);

calculating by at least one processor of the utility usage evaluation system a utility consumption from each utility source for at least one site (paragraphs 16-17); and

generating by at least one processor of the utility usage evaluation system a report detailing the utility

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usage of one or more of the sites (paragraphs 16-18 and Figs. 6-7).

Referring to claim 24:

Cmar does not teach; however, Or teaches
comparing by at least one processor of the utility usage evaluation system the utility consumption of one or more of the mobile assets with the utility consumption of respective benchmark standards generated from similar mobile assets (paragraphs 16-18; "perform benchmark comparisons that show how the energy consumption and efficiency of a particular energy system in a facility compares to a benchmark system"); and

generating by at least one processor of the utility usage evaluation system a report detailing the difference between the utility consumption of one or more of the mobile assets and respective benchmark standards (paragraphs 16-18 and Figs. 6-7).

Referring to claim 30:

Cmar does not teach; however, Or teaches
comparing by at least one processor of the utility usage evaluation system the utility consumption of one or more of the mobile assets with the utility consumption of respective benchmark standards generated from similar

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mobile assets (paragraphs 16-18; "perform benchmark comparisons that show how the energy consumption and efficiency of a particular energy system in a facility compares to a benchmark system"); and

generating by at least one processor of the utility usage evaluation system a report detailing the difference between the utility consumption of one or more of the mobile assets and respective benchmark standard of the mobile asset (paragraphs 16-18 and Figs. 6-7).

Referring to claims 34 and 40:

Cmar does not teach; however, Or teaches the client data store includes is further configured to store data representing one or more mobile assets associated with the organization (paragraphs 16-17; where "equipment" is interpreted to include mobile assets);

the utility consumption calculator is further configured to calculate a utility consumption from each utility source for at least one mobile asset (paragraphs 16-17; "monitors and analyzes energy consumption"); and

the report generator is further configured to generate a report detailing the utility usage of one or more of the mobile assets of the organization (paragraph 16 and Figs. 6-7).

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It would have been obvious for a person of ordinary skill in the art (PHOSITA) at the time of invention to modify the teachings of Cmar as taught by Or because this would allow for additional flexibility and completeness in calculating the energy use of an organization.

Referring to claims 35 and 41:

Cmar does not teach; however, Or teaches the client data store includes data representing one or more sites operated by the organization that are associated with one or more mobile assets (paragraphs 16-18; "particular energy system in a facility" where "energy system" is interpreted to include mobile assets);

the utility consumption calculator is configured to calculate a utility consumption from each utility source for at least one site (paragraphs 16-17); and

the report generator is configured to generate a report detailing the utility usage of one or more of the sites (paragraphs 16-18 and Figs. 6-7).

Referring to claims 36 and 42:

Cmar does not teach; however, Or teaches the benchmark database includes data representing the utility consumption of respective benchmark standards generated from similar mobile assets (paragraphs 16-18;

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"perform benchmark comparisons that show how the energy consumption and efficiency of a particular energy system in a facility compares to a benchmark system" and where it is implied that the data is stored in a database);

the utility consumption comparer is configured to compare the utility consumption of one or more of the mobile assets with the respective benchmark standards stored in the benchmark database (paragraphs 16-18; "perform benchmark comparisons that show how the energy consumption and efficiency of a particular energy system in a facility compares to a benchmark system"); and

the report generator is configured to generate a report detailing a difference between a utility consumption of one or more of the mobile assets and the respective benchmark standard (paragraphs 16-18 and Figs. 6-7).

Response to Amendment

1. The amendment filed 05 May 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

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- a. Claims 19 and 25: "determining by at least one processor of the utility usage evaluation system respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities"
- b. Claim 19: "comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities"
- c. Claim 25: "comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes"
- d. Claim 31: "a utility consumption calculator configured to calculate a utility consumption from each utility source for at least one facility, calculate an energy intensity for one or more of the facilities, the energy intensity based at least partly on a timing and a frequency of use of equipment within

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the one or more facilities, determine respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities, and to apply the correcting factors to the utility consumptions of the facilities" and "a utility consumption comparer configured to compare the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities"

e. Claim 37: "a utility consumption calculator configured to calculate the utility consumption from each utility source for at least one process, calculate an energy intensity for one or more of the processes, the energy intensity based at least partly on a timing and a frequency of use of equipment associated with the one or more processes, determine respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities, and apply the correcting factors to the utility consumptions of the processes" and "a utility consumption comparer configured to compare the corrected utility consumption of one or more of the

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processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes"

f. Claims 43 and 44: "determining respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities"

g. Claim 43: "comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities"

h. Claim 44: "comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes"

i. Claims 45 and 46: "means for determining respective correcting factors, the correcting factors correlating to the calculated energy intensity or intensities"

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j. Claim 45: "means for comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the facilities with the utility consumption of respective benchmark standards automatically generated from dissimilar facilities"

k. Claim 46: "means for comparing by at least one processor of the utility usage evaluation system the corrected utility consumption of one or more of the processes with the utility consumption of respective benchmark standards automatically generated from dissimilar processes"

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

Applicant's arguments with respect to claims 19-46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a).

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Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARRIE A. STRODER whose telephone number is (571)270-7119. The examiner can normally be reached on Monday - Thursday 8:00 a.m. - 5:00 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jan Mooneyham can be reached on (571)272-6805. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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